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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/973,416	11/14/1997	MORIO HARA	13700-0176	6879
7590 04/22/2004			EXAMINER	
ROBERT G. MUKAI BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. BOX 1404 ALEXANDRIA, VA 22313-1404			KRUEER, KEVIN R	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/973,416

Applicant(s)

HARA ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 20-22, 24-31 and 33-37 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 22, 24-31 and 33-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The examiner notes that the "Listing of Claims" filed January 21, 2004 includes the incorrect claim indicator for claim 20. Claim 20 is currently withdrawn from consideration as being drawn to a non-elected invention. Claims 20 and 21 were withdrawn from consideration as a result of Applicant's election filed on August 22, 2000.

Specification

2. The objection to the amendment filed August 5, 2003 under 35 U.S.C. 132 because it introduces new matter into the disclosure has been overcome by amendment. Applicant has amended the paragraph to remove the new matter.

Claim Rejections - 35 USC § 112

3. The rejection of claim 32 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been overcome by amendment. Applicant has deleted claim 32.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3, 5-8, 22, 24, 26-29, 31, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,274,024) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223) for reasons of record.

Art Unit: 1773

The water insoluble thermoplastic resin in Koyama is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is dispersed therein. Furthermore, the composition of Koyama is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because the resin composition taught in Koyama exhibits higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000).

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,274,024) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223), as applied to claims above, and further in view of Moritani et al. (Pat. No. 4,999,229) for reasons of record.

7. Claims 1, 3, 5-8, 10, 11, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle III (US 5,320,889) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223) for reasons of record.

The water insoluble thermoplastic resin in Bettle is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Bettle is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a

Art Unit: 1773

result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

8. Claims 1, 3, 4-9, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofgren et al. (US 5,133,999) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223) for reasons of record.

The water insoluble thermoplastic resin in Lofgren is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Lofgren is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

9. Claims 1, 3, 5-11, 22, 24, 26-28, 31, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itamura et al. (US 5,492,953) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223) for reasons of record.

The water insoluble thermoplastic resin in Itamura is understood to “protect” the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Itamura is understood to “protect” the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

10. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the above combination of references and further in view of Hofeldt et al. (US 5,204,389) for reasons of record.

11. Claims 25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,274,024) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223); or Itamura et al. (US 5,492,953) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) and Teumac et al. (US 5,663,223), as applied above, and further in view of Hofeldt et al. (US 5,204,389) for reasons of record.

12. Claims 1, 3, 5-8, 22, 24, 26-29, 31, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal (US 6,130,263) in view of JP-0172416 (assigned to Daiichi Seiyaku Co.) for reasons of record.

The water insoluble thermoplastic resin in Hekal is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Hekal is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

13. Claims 1, 2, 6-8, 22, 24-28, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (Pat. No. 5,274,024) in view of Hofeldt et al. (US 5,204,389) for reasons of record.

The water insoluble thermoplastic resin in Koyama is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Koyama is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is

Art Unit: 1773

understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,274,024) in view of Hofeldt et al. (US 5,204,389), as applied to claims above, and further in view of Moritani et al. (US 4,999,229) for reasons of record.

15. Claims 1, 6-8, 10, 11, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel III (US 5,320,889) in view of Hofeldt et al. (US 5,204,389) for reasons of record.

The water insoluble thermoplastic resin in Bettel is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Bettel is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

Art Unit: 1773

16. Claims 1, 2, 6-9, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofgren et al. (US 5,133,999) in view of Hofeldt et al. (US 5,204,389) for reasons of record.

The water insoluble thermoplastic resin in Lofgren is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Lofgren is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

17. Claims 1, 2, 6-11, 22, 24-28, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itamura et al. (Pat. No. 5,492,953) in view of Hofeldt et al. (US 5,204,389) for reasons of record.

The water insoluble thermoplastic resin in Itamura is understood to "protect" the hydrophobic reducing organic compound because the reducing compound is necessarily dispersed therein during kneading. Furthermore, the composition of Itamura is understood to "protect" the hydrophobic reducing organic compound and read on the limitations of claim 37 because a resin composition comprising the claimed

Art Unit: 1773

components will necessarily exhibit higher oxygen absorbing functions when exposed to water than it does when it is not exposed to water (see the data in the Shimizu declaration filed August 22, 2000). Said increased oxygen absorbing function is understood to be a result of the water interacting with the composition. Since the prior art composition comprises the same components as the claimed composition, it is understood to interact with water in the claimed manner.

18. The rejection of Claims 3-5 and 29-32 under 35 U.S.C. 103(a) as being unpatentable over Itamura et al. (Pat. No. 5,492,953) in view of Hofeldt et al. (US 5,204,389); or Koyama et al. (Pat. No. 5,274,024) in view of Hofeldt et al. (US 5,204,389), as applied above, and further in view of Blinka et al. (US 5,834,079) has been overcome. Blinka does not qualify as prior art. Applicant's Japanese priority documents pre-date the filing date of Blinka. Applicant filed certified translations of the Japanese priority documents with the Response mailed March 26, 2000.

Response to Arguments

Applicant's arguments filed January 26, 2004 have been fully considered but they are not persuasive.

Applicant argues that one of ordinary skill in the art would understand that hydrophilic reducing compound is protected by the hydrophilic and water insoluble thermoplastic resin and this combination is then dispersed in the hydrophobic resin. Applicant argues that the claimed composition is distinguished from a composition wherein all the compounds are kneaded together, rather than in a defined sequence. Applicant points to the Declaration under 37 CFR 1.132 submitted on May 16, 2001

Art Unit: 1773

which shows that the hydrophilic reducing organic compound is depleted even in the absence of water when components A-C are kneaded together.

Applicant's argument is not persuasive because the data in the declaration is not commensurate in scope with the claimed invention. The data attempts to show a difference in the way the pellet is manufactured will affect the resulting pellet's properties. However, the majority of the claims are not drawn to a pellet. While Shimizu's declaration argues that unexpected results will be observed in pellet, composition, or film form, Applicant's arguments cannot take the place of evidence. Thus, there is no evidence on record with regards to film or laminate comprising the claimed resin composition.

With respect to the "pellet" claims, the examiner takes the position that the showing in the declaration is not commensurate in scope with the claims. The claims are not limited to pellets that are made by compounding the components at a temperature lower than the melting temperature of the water insoluble thermoplastic resin compound and equal to or higher than the melting temperature of the hydrophobic thermoplastic resin. Furthermore, the claims are not limited to a pellet wherein the hydrophobic resin encapsulates the water insoluble thermoplastic resin and the reducing compound. The pending claims encompass both the "comparative" examples and the "inventive" examples of the declaration.

According to applicant, Embodiments 1-4 in Table 1 on page 18 of the specification demonstrate that the claimed pellet is structurally different than the pellets taught/rendered obvious by the prior art. The examiner respectfully disagrees. The

Art Unit: 1773

data in Table provided in the Declaration filed July 2000 shows that pellets made by the prior art method and those made according to the examples in the specification exhibit very similar oxygen absorbance in the presence of water. Furthermore, the examiner notes that the current claim language is inclusive of the particles wherein both the hydrophilic and water insoluble thermoplastic a resin and the hydrophobic thermoplastic resin were molten during kneading.

Applicant further argues that the prior art does not disclose the specifically defined sequence wherein the hydrophilic reducing organic compound and the hydrophilic and water insoluble thermoplastic resin are first combined and the obtained kneaded compound is then mixed with the hydrophobic thermoplastic resin and certainly does not recognize the advantages which can be obtained therefrom. The examiner notes the method of making a product does not patentably distinguish a claimed product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, Applicant has not shown that the method of kneading the components inherently results in a materially different product. Thus, the examiner maintains the position that the composition of Koyama in view of the secondary references reads on the claimed invention because it comprises the same components as the claimed resin composition. Furthermore, the current claim language is inclusive of the particles wherein both the hydrophilic and water insoluble thermoplastic a resin and the hydrophobic thermoplastic resin were molten during kneading.

Art Unit: 1773

With respect to the rejection of claims as being unpatentable over Koyama in view of JP 56-96686 (herein referred to as Daiichi Seiyaku) and Teumac, Applicant argues that Koyama leads one of ordinary skill in the art away from a composition wherein the hydrophilic and water insoluble thermoplastic resin provides an oxygen gas barrier for the hydrophilic reducing organic compound. The examiner respectfully disagrees. Both the hydrophilic and water insoluble thermoplastic resin and the reducing organic compound are taught to be hydrophilic. The chemical similarity of components A and B would cause component A to be dispersed in component B, regardless of how the components were kneaded.

Applicant further argues that Koyama is substantially different from the claimed invention because Koyama teaches that the oxygen permeation coefficient is larger than 10^{-12} cc*cm/cm²*sec*cm*Hg. The examiner fails to see how such a teaching is "substantially different from the claimed invention" since an oxygen permeation coefficient is not claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., water permeation coefficient) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that Koyama specifically describes a preference to metal powders, particularly reducing iron, and to attempt to substitute the oxygen scavenger taught in Daiichi Seiyaku for the oxygen scavenger taught in Koyama would proceed

Art Unit: 1773

contrary to Koyama's stated preference. While Koyama teaches that reducing iron is preferred, reducing iron is not critical to the invention of Koyama. To the contrary, Koyama teaches that all oxygen scavengers customarily used in the field can be used (col 4, lines 4+). Thus, the examiner maintains the position that one of ordinary skill in the art would have been motivated to use the oxygen scavenger taught in Daiichi Seiyaku as the oxygen scavenger in Koyama to enhance the oxygen barrier properties of the laminate.

With respect to Daiichi Seiyaku, Applicant argues the reference teaches incorporating ascorbic acid containing zeolite into small porous bags. Applicant argues such a use is significantly different from incorporating material into a resin composition. The examiner agrees, but pointed to the teachings of Teumac to draw the nexus between adding oxygen-absorbing components to bags and to resin compositions. Specifically, Teumac teaches that oxygen scavengers that were once added directly to foodstuff are now being incorporated into food packaging containers (see Background of the Invention, specifically col 3, lines 48+).

Applicant notes that Teumac does not teach that oxygen scavengers that were once added directly to foodstuff are now being incorporated into food packaging containers, only that "attempts" have been made to incorporate oxygen scavengers into containers. The examiner does not understand how this distinction would overcome the prior art. In either situation, Teumac would provide motivation to one of ordinary skill in the art to incorporate oxygen-absorbing components that have traditionally been added directly to foodstuff into food packaging containers.

Art Unit: 1773

Furthermore, Applicant argues that Teumac would have motivated one of ordinary skill in the art to add an inorganic sulfite compound or a tocopherol compound, not the claimed "hydrophilic reducing organic compound" to the container of Koyama. The examiner respectfully disagrees. The examiner maintains the position that Teumac would have motivated one of ordinary skill in the art to add any oxygen scavenger previously incorporated into foodstuff into a resinous packaging composition.

With respect to Moritani, Applicant argues that the reference is directed to a multi-layered packaging material designed for packaging food that has been deaerated, heat sealed, and then sterilized. Applicant further notes that Moritani does not teach the need for the packaging material to comprise oxygen absorbents. Thus, Applicant concludes that there is no motivation to combine Moritani with Koyama. The examiner respectfully disagrees. Both references are drawn to gas barrier packaging laminates comprising intermediate layers comprising EVOH/resin blends and inner layers that are moisture resistant but oxygen permeable. Moritani teaches that the inner layer should have a moisture permeability of not more than $20\text{g/m}^2\text{-day}$ in order to obtain the desired gas barrier properties (col 9, lines 20+). Thus, the examiner maintains the position that Moritani would have motivated one of ordinary skill in the art at the time the invention was made to alter the moisture permeability of the inner layer of the laminate taught in Koyama in order to obtain a film with the desired gas barrier properties.

Applicant further argues that Moritani does not remedy the deficiencies of Koyama with regard to the defined oxygen gas barrier provided by the hydrophilic and water insoluble thermoplastic resin. The examiner agrees, but notes that Moritani was

Art Unit: 1773

never relied upon for such a teaching. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the rejections based upon Bettle, Applicant argues that Bettle is even further removed from the invention than Koyama because Bettle does not describe the presence of an oxygen scavenger and actually provides a reason to why one would not be necessary. Specifically, Bettle "plainly states" that the separate EVOH layer (reference number 42) is described as providing a complete oxygen barrier that protects the contents of the bottle. The examiner respectfully disagrees with Applicant's interpretation of the reference. While Bettle teaches that the EVOH layer provides the laminate with gas barrier properties, Bettle does not teach that the layer prevents all oxygen from permeating the packaging. To the contrary, one of ordinary skill in the art would know that no resin, even those commonly referred to in the art as "gas barriers," provide a package with absolute zero oxygen permeability.

With respect to the rejections based upon Lofgren, Applicant argues that the reference does not teach the presence of an oxygen scavenger or the need for such a material. The examiner agrees, but notes that the rejection never relied upon Lofgren for such a teaching. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

Art Unit: 1773

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986). Teumac was relied upon to provide motivation to one of ordinary skill in the art at the time the invention was made to add an oxygen scavenger to the laminate taught in Lofgren.

With regard to the rejections based upon to the teachings of Itamura, Applicant argues that the purpose of the inorganic material taught in Itamura is to absorb water, not oxygen. However, the examiner never relied upon the inorganic material in Lofgren to read on the claimed hydrophilic reducing compound. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the examiner notes that the function of the claimed porous inorganic compound is not specified. Thus, any porous inorganic compound, regardless of its function, would read on the claimed invention.

With respect to the rejections based upon Hekal, Applicant argues that Hekal is drawn to a desiccant material designed to absorb water and is not combinable with Daiichi Seiyaki because Hekal does not indicate any requirement for an oxygen scavenger. However, the particles taught in Daiichi Seiyaki are taught to be desiccants. Thus, the examiner maintains that one of ordinary skill in the art would have been motivated to combine the teachings of Hekal and Daiichi Seiyaki.

Art Unit: 1773

Applicant further argues that the film taught in Hekal, which comprises "veins or channels that act as moisture communicating passages throughout the polymer," is the antithesis of the oxygen barrier layer as set forth in the claims. The examiner respectfully disagrees. Applicant's claims do not exclude compositions comprising "veins or channels." Thus, Applicant's arguments do not agree in scope with the pending claims.

Since all rejections based upon the teachings of Blinka have been dropped for the reasons stated above, Applicant arguments with regard to Blinka are moot.

Conclusion

19. In order to expedite prosecution and discuss the current rejections, Applicant is encouraged to call the examiner and schedule an interview.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

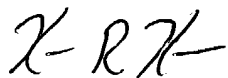
Art Unit: 1773

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin R. Kruer
Patent Examiner-Art Unit 1773



Paul Thibodeau
Supervisory Patent Examiner
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